

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

1. No formal testimony was taken in this case as the parties indicated there is no disagreement as to the facts. The petitioner is a forty-two year old Vermont man who has been participating in a program in Massachusetts for persons with traumatic brain injury since May of 2000. This treatment is paid for through the Vermont Medicaid long-term care program. As the petitioner has \$1,504 per month from Social Security income all, except \$47.66 for personal expenses, is paid over to the nursing home as his share of the monthly charge. Medicaid pays the balance.

2. The petitioner lived in an apartment before going into the nursing facility and was apparently unable to take his furnishings and belongings with him when he went. He rented two storage bins near his former home in Rutland to store his furniture at a cost to him of \$110 per month.

3. Although the Department notified him some time ago that he was required to pay all but the amount of the personal share expense to the nursing home, the petitioner apparently misunderstood this and was paying for storage of his belongings every month out of his check. It appears that he had some control over his money in the past because he had some earned income through a paycheck as well as his Social Security income. The result is that he has run up a debt to the nursing home at a rate of \$110 per month for almost a year.

4. By April of this year, the petitioner had only Social Security income which was paid directly to the nursing home from which only \$47.66 was reserved for his personal needs allowance. He has been unable to pay the storage fee since then. He asked PATH in April of 2002 to allow him a change in his patient share but he was denied.

5. A community health advocate who is assisting the petitioner in his transition back to Rutland filed an appeal

for him on April 11, 2002. At a hearing scheduled for June 13, the advocate appeared for the petitioner and stated that he was assisting the petitioner with returning home in the near future. At that time the case was continued to allow PATH to consider whether the regulation could allow such a storage payment and for the petitioner to provide any additional information needed by PATH.

6. When the hearing was reconvened on August 6, 2002, the advocate indicated that the petitioner was due to return to the community at the end of September 2002. He stated that the petitioner was anxious about retrieving his furnishings since he had not been able to pay the storage bill for five months. PATH indicated at that time that it would not change its legal position with regard to deduction of the furniture storage expense. The hearing officer explained to the petitioner's advocate that PATH's regulations require written verification from the petitioner's physician that he was to return home within six months.

7. Within a few days, the advocate provided a letter from the petitioner's treating psychiatrist confirming that he "was expected to return to Vermont within the next six months" and would be residing in a staffed apartment in Rutland and would have a comprehensive plan for his mental health care in

the community. Although this letter used the phrase found in the regulation ("return within six months") it did not state the date of actual return. It is reasonable, however, to find based on information provided by the advocate who has been involved in the transition move of the petitioner since at least April of this year that the actual date of return is the end of September 2002.

ORDER

The decision of the Department is reversed.

REASONS

The Department has adopted a regulation in the Medicaid program to allow persons living in long term care to keep sufficient money to maintain their homes if they are expected to return within a six-month period. Pertinent parts of that regulation are as follows:

A deduction from monthly income may be allowed for expenses to maintain an individual's home . . . in the community for up to six months when:

. . .

A doctor's statement shows that the individual . . . is expected to be discharged from the facility within six months and to return home immediately after discharge. The Department shall require a doctor's statement before granting the deduction and shall require a doctor's

statement again before granting the second three months of the six-month deduction.

. . .

Should the situation change during this six-month period, the individual's . . . eligibility for the home upkeep deduction must be redetermined. The deduction must be terminated when:

- (a) the home is sold or rented, or
- (b) the individual . . . gives up rented quarters
- (c) the condition of the individual . . . will no longer permit his/her . . . discharge from long-term care and return to the home by the end of the six-month period.

Medicaid Manual 413.1

Under the above regulation, the petitioner could have unquestionably had an amount deducted from his patient share to cover the maintenance costs of an entire apartment including his furnishings for the six months prior to his return to the community from long-term care. There is clearly a strong intention in this regulation to prevent the loss of shelter and belongings for persons who are expected to return to the community in a short period of time.

The petitioner in this case has given up his apartment but has tried to maintain his household furnishings by putting them in storage. The amount that this has cost him is much less than maintaining an entire apartment. Yet, PATH has taken the position that it will not allow any deduction for

maintaining the furnishings alone under the above regulation. It has offered no rationale for this interpretation other than the fact that the regulation does not specifically refer to the storage and maintenance of personal furnishings.<sup>1</sup>

It is an axiom of law that remedial legislation is to be interpreted liberally to effectuate the purpose of that legislation. State v. Therrien 161 Vt. 26 (1993). In that case the Supreme Court said that "although we usually apply the plain meaning of legislation, our overall function is to give effect to legislative intent, deriving that intent 'from the entire enactment, its reason, purpose and consequences' so that 'the letter of a statute or its literal sense must yield when it conflicts with legislative purpose. (citation omitted)" Id. at 31.

The purpose of this regulation, so clear from both its text and context, is to preserve for some period of time the ability of the long-term care resident to return to his prior living situation upon discharge. Preserving a house or apartment and the furnishings therein is a comprehensive way

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<sup>1</sup> PATH has also argued that the portion of the regulation which requires termination of the deduction when the "individual gives up rented quarters" would prevent it from paying for storage because the petitioner gave up his apartment. That is a misreading of the regulation since that section would only stop a deduction for expenses related to payment on the rented quarters themselves when those expenses were no longer incurred.

to accomplish this goal. However, preserving the furnishings and personal effects alone is no less important to a long-term care patient returning to the community. The loss of and need to replace such items would present the same psychological and financial detriment to the returnee as loss of the physical space they were in.

There is no reason not to interpret the "home upkeep" regulation as including the upkeep of the furnishings for the home. To hold otherwise would force persons who only want to maintain their home furnishings while they are in care to continue to rent expensive livable space to achieve that end. This could certainly cost PATH much more money in the long run than just allowing a deduction for the much lesser cost of furniture storage.

The final argument offered by PATH is that even if the regulation does cover storage facilities, the petitioner has not presented evidence that he was to return home in six months at the time of the April 2002 request.<sup>2</sup> PATH's position is that his eligibility can only be determined forward from the date of the physician's verification that he

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The "rented quarters" in this case are the rented storage lockers and they have never been "given up".

<sup>2</sup> PATH does not argue that the six-month period has be the first six months that the individual is in long-term care. Indeed, PATH's own bulletin 93-

was returning home which is dated August 6, 2002. This argument must be rejected because the only reason the petitioner's advocates did not present medical verification in April of 2002, was that PATH did not request it, apparently because it believed the petitioner did not meet the requirements of the regulation. In fact, throughout the four months that this matter was pending before the Board, PATH never requested such information from the petitioner. The first time the petitioner was aware of this requirement was when the hearing officer notified his advocate of the same at the hearing on August 6, 2002. The letter verifying that the petitioner was returning home was prepared that very day by his physician. The context of this case makes it very clear that the community advocate had become involved in April of 2002 in anticipation of the petitioner's return to the community from Massachusetts. Based on these facts, PATH has an obligation to grant the deduction back to April of 2002 for a period of six months through September of 2002.

The petitioner and his community advocate should be aware that PATH has no legal obligation to reduce the petitioner's patient share before the month of request and appeal in April

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2F, January 15, 1993 makes it clear that "the six months do not have to be the first six months following admission to long-term care." (See p. 3).

of 2002.<sup>3</sup> Any amounts which the petitioner may owe the nursing facility in Massachusetts for failure to pay his entire patient share from the inception of his residency through March of 2001 is a matter between the petitioner and the facility.

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<sup>3</sup> In addition, the regulations make it clear that PATH will not allow the deduction for more than a six-month period. That six months has been consumed by the months from April through September of 2002.